

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9250 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DHANJI JERAM

Versus

STATE OF GUJARAT

Appearance:

MR AR THACKER for Petitioner

MR MUKESH PATEL, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 23/12/98

ORAL JUDGMENT

Rule. Service of rule waived by Mr. Mukesh Patel,
Ld. A.G.P. for the respondents.

2. The facts as appearing in the list of dates and events would indicate that on or around 10/8/1976 the petitioner's father filled in form u/S. 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short

'U.L.C. Act'). Thereafter the petitioner's father applied for exemption u/S. 20 of the U.L.C. Act in respect of the agricultural land bearing survey nos. 72, 72/1, 72/2 and 72/5 and as per order dated 20/4/1979 exemption came to be granted. After the death of the petitioner's father there was partition in the family and the aforesaid survey nos. and part of survey no. 72 came to the share of the petitioner, who has been cultivating the land till today. However, by order dated 6/8/1998 the 1st respondent withdrew the exemption which was granted u/S. 20 of the U.L.C. Act. That order has been the subject matter of challenge in this petition inter-alia on the ground that neither the petitioner was served with any notice nor the petitioner had any opportunity of presenting his cause.

3. On 5/11/1998 notice was issued and on 9/12/1998 upon the submission of Mr. Mukesh Patel, Ld. A.G.P. for the respondents the petitioner was directed to state on oath dealing with the facts with regard to service of the notice through one Vallabhbhai Shivjibhai and attendance of the proceedings before the 1st respondent on behalf of the petitioner through said Vallabhbhai Shivjibhai. In compliance of the said order, the petitioner has filed affidavit stating therein that notice of hearing was served upon Vallabhbhai Shivjibhai on behalf of the petitioner on 12/3/1997 and adjournment was also sought on 10/6/1997 before the 1st respondent. But said Vallabhbhai Shivjibhai has been the petitioner's nephew and there had been partition amongst the petitioner and his two brothers after the petitioner's father died. It is further the say of the petitioner that as a result of the partition the land bearing survey no. 72 part came to his share and he has been cultivating the same. He has further asserted that he did not have any relation with his nephew Vallabhbhai Shivjibhai and he never authorised to accept notice on his behalf. According to his stand the land bearing survey no. 72 part came to be mutated to his name in the record of rights and, therefore, it was incumbent upon the authority to issue notice to him separately. He has finally asserted that notice of hearing was never served upon him and that he could have pointed out before the authority that he never committed any breach of the orders passed by the Government on 20/4/1979.

4. In view of what has been stated by the petitioner on oath and having heard the Ld. A.G.P. for the respondents, I am of the opinion that the matter is required to be remanded to the 1st respondent for considering the same afresh after hearing all the

concerned parties including the present petitioner.

5. In the result, impugned order dated 6/8/1998 passed by the 1st respondent is hereby set aside and the matter is remanded to the 1st respondent for considering the same afresh and deciding the same in accordance with law after hearing all the parties including the present petitioner.

Rule made absolute in the aforesaid terms. No order as to cost.

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